

Bureau of Land Management, Interior

§ 3850.0-9

(a) Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced, and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by sections 21-24, 26-28, 29, 30, 33-48, 50-52, and 71-76 of this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

(b) Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be made at the rate applicable to placer claims which do not include a vein or lode. (As amended Mar. 18, 1960, Pub. Law 86-390, 74 Stat. 7.)

[35 FR 9752, June 13, 1970]

§ 3844.1 Required use.

A millsite is required to be used or occupied distinctly and explicitly for mining or milling purposes in connection with the lode or placer claim with which it is associated. A custom or independent millsite may be located for the erection and maintenance of a quartz mill or reduction works.

[35 FR 9752, June 13, 1970]

PART 3850—ASSESSMENT WORK

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AUTHORITY: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28-28k; 50 U.S.C. Appendix 565; 107 Stat. 405.

§ 3850.0-1 Purpose.

The purpose of this part is to recite the requirements of the General Mining Law of 1872, as amended, for the performance of assessment work; to identify the methods provided by statute for qualifying assessment work; to provide for the deferment or suspension of assessment work under certain conditions; and to advise the claimant of the consequences of failing to perform the work.

[58 FR 38202, July 15, 1993]

§ 3850.0-9 Information collection.

(a) The collections of information contained in part 3850 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0104 and subsequently consolidated with 1004-0114. The information will be used to allow the BLM to process petitions for the deferment of assessment work, determine if the assessment work required by statute (30 U.S.C. 28-28(e)) was indeed performed, and to determine the ownership of a mining claim or site in cases of delinquency of co-owners under 30 U.S.C. 28. A response is required to obtain a benefit in accordance with Section 2324 of the Revised Statutes, as amended (30 U.S.C. 28-28(e)) and 43 CFR part 3850.

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching

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existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St., NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004-0114, Washington, DC 20503.

[58 FR 38202, July 15, 1993]

Subpart 3851—Assessment Work: General

SOURCE: 35 FR 9753, June 13, 1970, unless otherwise noted.

§ 3851.1 Assessment work requirements.

(a) The assessment year begins at 12 o'clock noon on September 1st and ends at 12 o'clock noon on the following September 1st.

(b) All lode and placer mining claimants shall have performed, or caused to have been performed, not less than \$100 of labor or improvements upon each lode or placer claim held by the claimant for each assessment year following the assessment year of the lode or placer claim's location.

(c) Where a group of lode or placer claims are held in common, and cover the same mineral deposit, the assessment work may be performed on one or several claims of the group, as long as the aggregate expenditure totals not less than \$100 per claim, and the work performed or improvements made will benefit the development of the claim block as a whole.

[58 FR 38202, July 15, 1993]

§ 3851.2 Inclusion of surveys in assessment work.

(a) In addition to the several types of work that may fulfill the annual labor requirement, the requirement can also be satisfied by conducting geological, geochemical, and geophysical surveys. Pub. L. 85-876, Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1-2). Such surveys must be conducted by qualified

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experts and verified by a detailed report filed in the county or recording district office in which the claim is located. This report must set forth fully the following:

(1) The location of the work performed in relation to the point of discovery and boundaries of the claim.

(2) Nature, extent and cost of the work performed.

(3) The basic findings of the surveys.

(4) The name, address and professional background of the person or persons conducting the work.

Such surveys may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim. Each survey shall be nonrepetitive of any previous survey of the same claim. Such surveys will not apply toward the statutory provision requiring the expenditure of \$500 for each claim for mineral patent.

(b) As used in this section—

(1) The term *geological surveys* means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(2) The term *geochemical surveys* means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) The term *geophysical surveys* means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical difference between rock types or discontinuities in geological formations;

(4) The term *qualified expert* means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

§ 3851.3 Effect of failure to perform assessment work.

(a) Failure of a mining claimant to comply substantially with the requirement of an annual expenditure of \$100 in labor or improvements on a claim imposed by section 2324 of the Revised

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Statutes (30 U.S.C. 28) will render the claim subject to cancellation.

(b) Except as provided in § 3851.5 and subpart 3852, failure to perform the assessment work required under § 3851.1 causes the interest of the claimant(s) in the minerals subject to the mining laws to revert back to the public domain.

(c) 30 U.S.C. 28f, with certain exceptions for small miners, temporarily suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual \$100 maintenance fee per mining claim in lieu of the assessment work. For oil shale claims, the Energy Policy Act of 1992 (30 U.S.C. 242) suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual \$550 rental fee per oil shale mining claim in lieu of the assessment work. The maintenance fee requirements and waivers from the maintenance fee are described in §§ 3833.0-3(f), 3833.1-5, 3833.1-6, and 3833.1-7 of this title.

[37 FR 17836, Sept. 1, 1972, as amended at 58 FR 38202, July 15, 1993; 59 FR 44863, Aug. 30, 1994; 64 FR 47022, Aug. 27, 1999; 67 FR 38206, June 3, 2002]

§ 3851.4 Failure of a co-owner to contribute to annual assessment work; or to the payment of maintenance fees.

(a) Upon the failure of any co-owner of a mining claim or mill or tunnel site to contribute the proper proportion of the required expenditures, the co-owners who have performed the labor, made improvements, paid the maintenance fee required under §§ 3833.1-5 and 3833.1-6 of this title, may, at the expiration of the assessment year, give such delinquent co-owner personal notice of this failure in writing. Alternatively, this notice may be given by publication in the newspaper published nearest the claim for at least once a week for 90 days. If, upon the expiration of 90 days, after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute the proportionate share of such expenditures or improvements, such interest in the

claim by law passes to the co-owners who have made the expenditures or improvements.

(b) A claimant alleging ownership of a forfeited interest under paragraph (a) of this section who requests the authorized officer to change the ownership records of the affected mining claims or sites shall present the following:

(1) Statement of the publisher of the newspaper as to the facts of publication, giving the beginning and ending dates of publication, a printed copy of the notice published, and a statement by the claimant that the delinquent co-owner failed to contribute the proper proportion within the period fixed by the statute, or

(2) Evidence of personal notice of delinquency upon the delinquent party. If notice is effected by mail, the minimum sufficient evidence shall consist of a copy of the notice and a copy of the return receipt of the U.S. Postal Service evidencing receipt by the delinquent party of a registered or certified envelope containing the notice. If notice was made in person, an affidavit signed and dated on the date of notice will suffice as evidence of such notice; and

(3) In all cases, a signed and dated statement by the claimant that the delinquent co-owner failed to contribute the proper proportion within the period fixed by the statute.

(c) Upon determination by the authorized officer that paragraphs (a) and (b) of this section have been complied with, the BLM records of the mining claim shall be changed pursuant to § 3833.3 of this title. Such a change in ownership requires that the claimant submit the service charge required for a transfer of interest pursuant to § 3833.1-4 of this title.

(d) Active duty military personnel who give notice and comply with § 3851.6 are not subject to the provisions of this section.

[59 FR 44863, Aug. 30, 1994]

§ 3851.5 Assessment work not required after allowance of mineral entry.

Performance of annual assessment work and payment of maintenance fees is not required after the date that the mineral entry has been allowed.

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(a) The assessment year in which the mineral entry is allowed is the first assessment year for which the assessment work and payment of maintenance fees is no longer required, and assessment work is not required in any assessment year thereafter until a mineral patent issues.

(b) If a mineral entry is canceled in whole or in part, the mining claims and mill sites that are no longer covered by the mineral entry shall be subject to the assessment work requirement, or the payment of maintenance fees, beginning in the next assessment year following the assessment year that the mineral entry was canceled.

[59 FR 44863, Aug. 30, 1994]

§ 3851.6 Assessment work not required for active duty military personnel.

Pursuant to the Soldiers' and Sailors' Relief Act (50 U.S.C. Appendix 565), a person entering active military service is exempt from the performance of annual assessment work under this subpart for each assessment year in which the service person is on active duty.

(a) To claim the exemption, the person entering active military service shall file, or cause to be filed with the proper BLM office, a notice of his or her entry into active military service. The notice shall be filed in the assessment year that the person entered active duty status.

(b) The filing of the notice exempts the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed from release from a military hospital, whichever is later.

(c) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year beginning at least 6 months after the date the person was released from active duty or a military hospital, whichever is later.

(d) The notice shall be filed as a certified statement pursuant to section 3833.1-7 of this title, and shall list all mining claims and sites affected by claim name and BLM serial number.

[59 FR 44863, Aug. 30, 1994]

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Subpart 3852—Deferment of Assessment Work

SOURCE: 35 FR 9753, June 13, 1970, unless otherwise noted.

§ 3852.0-3 Authority.

The Act of June 21, 1949 (63 Stat. 214; 30 U.S.C. 28b-c), provides for the temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

§ 3852.1 Conditions under which deferment may be granted.

The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

§ 3852.2 Filing of petition for deferment, contents.

(a) In order to obtain a deferment, the claimant shall file with the proper BLM office a petition in duplicate requesting such a deferment. No particular form of petition is required, but the applicant shall attach to one copy thereof a copy of the notice to the public required by 30 U.S.C. 28e showing that it has been filed or recorded in the local recording office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one-year period for which deferment is requested. Each petition shall be accompanied by a \$25 nonrefundable service charge.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or

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claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

[35 FR 9753, June 13, 1970, as amended at 53 FR 48882, Dec. 2, 1988; 59 FR 44863, Aug. 30, 1994]

§ 3852.3 Notice of action on petition to be recorded.

The claimant shall file or record, in the local recording office in which the notice of petition for deferment was filed or recorded, a copy of the order or decision of the BLM authorized officer disposing of the petition.

[59 FR 44864, Aug. 30, 1994]

§ 3852.4 Period for which deferment may be granted.

If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

§ 3852.5 When deferred assessment work is to be done.

All deferred assessment work may be begun at any time after the termination of the deferment but must be completed not later than the end of the assessment year commencing after the removal or cessation of the causes for the deferment or the expiration of any deferments granted under the act and

shall be in addition to the annual assessment work required by law for such year.

PART 3860—MINERAL PATENT APPLICATIONS

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3861.5-1 Appointment.

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3862.2 Citizenship.

3862.2-1 Citizenship of corporations and of associations acting through agents.

3862.2-2 Citizenship of individuals.

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